



Memorandum

TO: City Council

FROM: Mayor Ron Gonzales

SUBJECT: Response to Grand Jury
Report on Norcal Contract

DATE: September 1, 2005

Approved

Date

9/1/05

RECOMMENDATION

I recommend that the City Council review and transmit the response, comprehensive chronology, and document log prepared by the Mayor, City Manager, and City Attorney to the 2004-2005 Santa Clara County Civil Grand Jury Report regarding the Norcal contract amendment approved by the City Council in December 2004.

Because the City's independent investigation of the issues raised by the Grand Jury has not started, I further recommend that the City Council expressly include a statement that once the investigation is completed and the results considered by the Council, the City will forward the investigation report to the Grand Jury and submit a supplemental response if the results of the independent investigation warrant.

BACKGROUND

The Civil Grand Jury earlier this year chose to conduct a review of the Norcal contract for garbage and recycling services following the City Council's approval of a contract amendment in December 2004. The Grand Jury issued its report to the public on June 13, 2005.

When the Grand Jury's report is boiled down to its fundamental issues, it makes three principal claims about the Norcal contract and amendment: 1) there was an improper "deal" between the Mayor and Norcal that required the City to pay for additional labor costs; 2) the Council was not aware of the additional costs of labor; and 3) the Council was not aware of labor costs when it approved garbage rate increases in June 2003.

As I explain further in this memo, the Grand Jury is wrong on all three of these main points: 1) only the City Council can approve changes to the terms of a contract, not the Mayor, and the mayor could not commit the City Council; 2) the City Council was well aware of the potential costs of paying for labor peace and prevailing wages, especially when it approved the contract amendment in December 2004; and

3) The Council was aware of labor costs for providing prevailing wages for MRF workers in September of 2001. Council may not have remembered and should have been reminded of this information at the time of the rate increase hearings.

On June 28, 2005, the City Council approved my recommendation to retain an independent, professional, and unbiased investigator to review the Grand Jury's claims about the Norcal agreement. The investigation has yet to begin and likely will not be completed until later this fall, well after the legally required schedule for the City's official response to the Grand Jury.

The response prepared by the Mayor, City Manager, and City Attorney is based on the extensive information and documentation already available, but it does not reflect any additional information that might be developed by the independent investigation. It allows the City to comply with legal requirements for responding to Civil Grand Jury reports within 90 days, and the Council can amend the City's official response depending on the results of the investigation.

DISCUSSION

In addition to the response before the Council for transmitting to the Grand Jury, I am also providing a perspective from the Mayor's Office that addresses the issues and questions that have been identified by both the Grand Jury and subsequent news media coverage.

It is important to remind ourselves of the history and context of the contracts for garbage services. The City Council began discussions in 1997 about the risks and benefits of using an open competitive process for new contracts for garbage services. Because of the major start-up problems with *Recycled Plus!* in 1993, Council meeting transcripts show that councilmembers were very concerned about changing contractors, regardless of potential cost savings and service improvements that could be achieved through competition.

In 1998, before I was elected Mayor, the City Council approved the original goals for the competitive process for selecting new *Recycle Plus!!* service contracts. These goals included better service for our customers, more effective recycling, and lower costs, but the Council also stressed labor peace and worker retention in the event that contractors would change as a result of the competitive bidding process. I have always strongly supported competition as an effective way for the City to reduce costs and improve services, and the Council's original priorities also guided my decisions regarding garbage and recycling in San Jose.

Among the Council's top concerns since 1997 has been to ensure that our community could avoid disruptions of garbage services by labor disputes or work stoppages. Labor peace and worker retention were therefore among the clear criteria in the final Request for Proposals released in 2000. Time after time at public meetings, councilmembers stressed that the new contracts must provide fair wages for the hard-working men and women who do the tough job of collecting and sorting through our garbage.

Councilmembers also knew that labor peace and worker retention ultimately would be a factor in the cost of service. This knowledge was most clearly demonstrated in September 2001, almost one year before the transition, when City staff provided an analysis of the potential cost impacts of paying “prevailing wages” to materials recovery facility workers in response to Council’s questions. In March 2001 Council had directed staff to “engage staff in discussion with haulers regarding prevailing wage to these employees.”

Subsequent staff reports and presentations to the City Council indicated that there could be an additional contract cost of up to \$1.6 million annually to deal with the omission of MRF workers from the prevailing wage policy. Lengthy Council discussion at the September 25, 2001, study session showed that the Council was aware that if prevailing wages were to apply to MRF workers, this change to accomplish labor peace and worker retention could require the City Council to amend the contract and raise rates.

Finally, since the selection of the new vendors in fall 2000, the implementation of new services in July 2002, and the approval of the Norcal contract amendment last December, we have achieved these intended results for the people of San Jose:

- San Jose rates for garbage and recycling services remain below average for cities in the region, even with rate increases over the past five years.
- As a result of competition, the overall costs of these services to the public over the eleven-year period of the contract are nearly \$40 million lower than what they would have been with the prior contractors. These savings include the additional cost of labor reflected in the amendment to the Norcal contract approved by the City Council in December 2004.
- Recycling services for the public have been enhanced, and San Jose leads all major cities in California with its 62% rate of diversion of recoverable material from landfills.
- Workers employed by prior contractors had full and fair opportunity to find employment with the new contractors, without suffering cuts in wages or benefits.
- Once the contractors executed labor contracts achieved under a voluntary neutrality agreement, there has been no disruption of garbage service in our community due to labor issues.
- Customer satisfaction with the quality of their garbage services, measured by the City’s regular community surveys and customer feedback, remains excellent.

These are significant accomplishments that greatly benefit the public as a result of the City Council’s original commitment to a competitive process and its strongly and clearly expressed goals for the new contractors in the Request for Proposals developed in 2000.

Grand Jury assumptions

The Santa Clara County Grand Jury has historically played a vital role in examining aspects of county and local government to ensure that the best interests of the community are being served. The City regularly works with and responds to reports of the Grand Jury. In doing so, the work is done with spirit of mutual cooperation and professionalism to achieve the goals of continuous improvement and public accountability by local government.

I was therefore very disappointed by the poor quality and unusually hostile tone of this Grand Jury report. It made serious claims about the decision-making of the City and the Mayor's Office based on incomplete research and faulty analysis. Following the review of documents and materials that we used to prepare the City's response, it appears that the Grand Jury failed to review relevant Council meeting tapes or transcripts, and it either ignored or did not understand the significance of the public records it requested that showed what and when the City Council knew about the costs for achieving the goals of labor peace and worker retention.

As a former member of a Grand Jury and as a chair of a subcommittee, I know first hand the personal commitment and the time required to serve the public as a grand juror. I learned to greatly respect the institution and the people who serve with little recognition or reward for their hard work. Unfortunately, this Grand Jury report did not meet the standards of other Grand Jury efforts to benefit the public.

The Grand Jury report regarding the Norcal contract was prepared in a vastly different spirit and it was not consistent with professional style of other reports issued over the years. This report appears to have been framed by a number of assumptions by the Grand Jury that created a negative bias that contributed to its lack of objectivity.

1. The Grand Jury appeared to believe that any contact by public officials and administrators with people, businesses, or interests outside the public hearing process is inappropriate and should be viewed as "backroom discussions."

This view is both naïve and impractical, as councilmembers in their legislative and deliberative role must be open to many kinds of communications and points of view in order to carry out their duties. Moreover, people and interests in this democracy have the right to meet with their elected representatives.

The Mayor in particular has a vital and unique role that is unlike that of other councilmembers. The Mayor promotes the city, identifies opportunities and solutions to benefit the community, and prevents problems. He or she regularly meets with a wide range of stakeholders, decision makers, and potential investors in our community, and provides leadership and guidance. The Mayor's involvement can lead to results such as keeping major employers eBay in San Jose or attracting major events such as the San Jose Grand Prix. Proposals are often developed in preliminary discussions with the Mayor, but they are ultimately brought to the City Council for review and approval with full information.

In the case of the Norcal contract, the Mayor worked to achieve the City Council's original goals in the competitive process for selecting new *Recycle Plus!* service contracts that were first began to be discussed in 1997. These clear and strong goals included better service for customers, more effective recycling, lower costs, labor peace, and worker retention. The Mayor and City Council have achieved these goals with the selection of the new vendors in fall 2000, the implementation of new services in July 2002, and the amendment of the Norcal contract in 2004.

2. The Grand Jury appears to believe that the views represented by individual public officials in meetings with prospective City contractors actually represent the views of the entire City Council.

Again, this is a naïve perspective regarding the role and authority of the Mayor and councilmembers, and the relationship between individual members and the Council as a whole. City policy is determined by the entire Council, and statements or commitments from any individual councilmember or the mayor cannot bind the Council or the City. This is clear in the City Charter, and it is well understood by all members of the City Council.

3. The Grand Jury appears to believe that the City Council has a low standard for legislative decision-making, does not adequately consider or review the information and recommendations provided by professional staff, and is easily swayed by individual members or external influences.

Using the Norcal contract and the RFP process as an example, however, the City Council was exceedingly thorough in its decision-making on a matter of enormous consequence. From 1999 to the present, there have been at least 25 Council meetings dealing with the subject of competitive process, service standards and proposal criteria, and evaluation of garbage services, rates, and implementation. The full collection of memos, documents, and testimony over this period, which is attached to the proposed City response to the Grand Jury, clearly demonstrates the seriousness of purpose, strong commitment to public benefit, and public accountability by the entire City Council.

4. The Grand Jury appears to believe that the City Council responds more readily to individuals or businesses that provide political contributions, rather than making decisions based on public benefit.

Again, this reveals a simplistic and inaccurate view of City Council decision-making. San Jose has both strict limits on campaign expenditures and contributions and clear requirements for disclosures that have created an environment of political accountability. Recent enhancements of the City's ethics ordinances have strengthened this even further, and San Jose now has one of the strongest sets of local government ethical guidelines among cities in California.

5. The Grand Jury appears to believe that mere assertions of “wrong doing” or legal violations are sufficient without identifying which provisions of the City Charter, City policies, or state and federal law are specifically violated. It alleges that individuals are not telling the truth without specifying untruthful statements or contradictions among those providing information and testimony. The Grand Jury appears to believe it does not need to articulate the standards it uses for determining the truth or validity of testimony.

Responses to questions and issues raised by the Grand Jury

The Grand Jury and subsequent news media coverage have raised many specific questions about the role of the Mayor in the Norcal contract. I have prepared the following responses to these questions to assist the Council and the public better understand the complex issues involved with this matter.

1. Did the Mayor's Office know Norcal and CWS would have higher labor costs before the Council meeting of October 10, 2000, when the Council selected the *Recycle Plus!!* contractors?

No. My office learned that there were many questions and concerns about labor representation in the week before the October 10 council meeting. Letters from CWS, Norcal, and the Teamsters to the Mayor's Office on October 3 and October 4 mentioned labor peace, worker retention, and unresolved issues about union jurisdiction. At the time no one knew how this might affect Norcal's proposal or costs prior to the council meeting. In fact, these letters confirm that the contractors and labor were well aware of the Council's priorities for labor peace and worker retention and were committed to finding solutions to achieve those goals, leading the mayor to conclude that this issue would be resolved.

As part of the RFP process the City Council had unanimously required that the new vendors have a “worker retention policy” to ensure that the men and women already collecting and sorting our community's garbage would be given a fair opportunity to work for the new contractor. The Council also insisted on a “labor peace” provision in the contract to prevent potential work stoppages or disruptions in garbage services that could have a severe negative impact on our residents.

I must stress that the City Council and I strongly believe that both labor peace and worker retention commitments were critically important to protect the residents of our community. Labor peace ensures that we would not have garbage strikes or service disruptions. No city, no council, and no mayor want a garbage strike, and all the other cost and service benefits that we could achieve from competitive bidding for the contracts would be lost in the event of a serious disruption of service. Similarly, worker retention is also critical to labor peace because displaced workers easily could become a labor dispute. Worker retention also has long been a fundamental policy commitment to fairness that the San Jose City Council has consistently strived for.

As a result of the discussion at the October 10 council meeting, the entire City Council became aware of the potential labor dispute between Teamsters and Longshoremen about which union would represent CWS sorters. As the transcript of that meeting shows, councilmembers, City staff, Norcal, CWS, and union representatives discussed the issue of union jurisdiction affecting workers at the materials recovery facilities. The Council was also informed at this meeting by Bob Morales of the Teamsters that there were economic issues revolving around the dispute with CWS and Norcal.

In two letters received by the Mayor's Office on Monday, October 9, CWS committed to paying its sorters, and Norcal committed the same for its drivers, the equivalent wages as being paid by the contractors then providing garbage services to San Jose. These letters were in response to the Council's concerns about worker retention and labor peace. They did not indicate whether the costs of paying wages to ensure labor peace and worker retention might affect Norcal's proposal.

2. When did the Mayor's Office or the City Council know there would be higher labor costs?

Although the entire City Council learned at the October 10, 2000, Council meeting that there was a union jurisdiction issue between Longshoremen and Teamsters, the potential impact on costs was not identified or discussed at that time. Bob Morales, representing the Teamsters, told the City Council at this meeting that there were "economic issues" at stake, meaning that wages were among the union issues.

My office became aware of the potential for increased labor costs in the weeks following the October 10 Council meeting. Although there are no records of when we learned about this, our recollections are it was in the period between October and December that my staff had preliminary discussions with Norcal about potential cost increases.

No one, including City staff, the City Council, the Mayor's Office, Norcal, or labor representatives knew exactly what those potential costs would be, since there were still many operational and implementation issues for Norcal and CWS to settle before they actually began service in July 2002. Unresolved factors affecting costs included the actual number of employees and number of shifts, the location and design of the new CWS materials recovery facility, and ultimately the actual labor rates once the union jurisdiction and labor contract matters were settled by Norcal, CWS, and the union finally selected by CWS employees.

Councilmembers were aware that labor peace and worker retention ultimately would be a factor in the cost of service. In March 2001 Council directed staff to conduct a prevailing wage study in recognition that MRF workers may have been omitted from the RFP criteria in the first place. In September 2001, City staff followed up with its analysis of the potential cost impacts of paying prevailing wage to MRF workers in response to Council's questions.

Staff reported to the Council that there could be an additional labor cost up to \$1.6 million annually. Lengthy discussion at the Council study session on the matter on September 25, 2001, also confirmed that councilmembers understood that labor peace and worker retention that could require the City Council to amend the contract and increase rates.

Two years later in August 2003, CWS sent a letter to the Mayor and councilmembers that cited the "hundreds of thousands of dollars" that Norcal owed to CWS for the increased labor costs for paying sorters prevailing wages under its Teamsters agreement, retroactive to the start of services in July 2002. Finally, the City Council had full labor cost information provided by Norcal and verified by City staff before it approved the amendment to the Norcal contract in December 2004.

By the time the City Council acted on the contract amendment in 2004, there had been many opportunities to become fully knowledgeable about the additional labor costs associated with the Norcal contract and the Council's goals for labor peace and worker retention.

3. Could the City have prevented the issue of additional labor costs from becoming a problem?

The Recycle Plus! RFP process was well thought through, analyzed and researched by staff. We believe that on the whole the staff did solid work on this important contract. In the 2000 RFP response from Norcal and CWS provided assurances of labor peace showing their agreements with unions. The Norcal proposal assumed labor representation of sorters by Longshoremen based on the labor agreement at the CWS facility in Oakland, but it did not take into account the need for local workers to select their own union representation, which would be required for labor peace. Worker retention meant that the labor rates would have to be competitive with prevailing wages in the South Bay.

When the staff evaluated the proposals from garbage contractors before making its recommendations to the City Council, they did not discover or recognize the implications of the inherent flaw within the Norcal/CWS proposal that would interfere with achieving the Council's goals for both labor peace and worker retention. In hindsight, it would have been helpful if staff had found this flaw in the proposal and discussed it with Norcal before making recommendations to the Council in fall 2000 to meet the Council's goals for both worker retention and labor peace.

However, Norcal and CWS should have identified costs of worker retention and labor peace more clearly in their original proposal, and the City staff would have been allowed to provide an accurate and complete analysis of these costs.

4. Did the Mayor make a "secret deal" with Norcal to have the City pay the costs of higher labor costs, at a private meeting on October 6, 2000, as alleged by the Grand Jury?

No. I didn't make any commitment to Norcal, either on behalf of myself, the Council, or the City before the October 10, 2000, meeting. I could not have done so. First, I know that under the City Charter, the Mayor does not have the authority to make any kind of commitment for any contract; contract changes always must be approved by the City Council. Second, no one knew at that time what the potential increase in labor costs would be, if any.

Both my staff and I recall that the Friday, October 6, 2000, meeting was requested by Norcal as a courtesy meeting prior to the City Council meeting on Tuesday, October 10. This was a 30-minute meeting, and it was the one and only time I met with Norcal. Norcal had also been meeting privately with every other councilmember to explain its proposal and answer questions, as Bill Jones, representative of the company, publicly stated at the Council meeting on October 10. According to the meeting transcript, Jones said:

“I've met with everybody [*referring to councilmembers on the videotape*]. We've talked about our proposals. We understand that there are some remaining issues with respect to labor peace, specifically, the issue that was brought up earlier regarding a neutrality agreement. We understand those issues. We certainly had hoped that we could have them resolved by today, however we were not able to do that. However we are committed to the process of labor peace as we have been all along.”

At the Friday meeting, I told Norcal that I wanted the company to provide excellent service to the people of San Jose and to work hard to ensure labor peace and worker retention. We did not discuss wages or labor costs. We have no record of CWS representatives being present at this meeting, and neither my staff nor I remember them being there.

On numerous occasions over the following four years, my office told Norcal that I could not and would not recommend any contract change to the City Council until several conditions were met: 1) Additional costs must clearly defined and validated; 2) there must be clear assurances that any increased costs would go only to the people doing the work; and 3) the overall contract must remain good for the people of San Jose and continue to achieve the Council's original RFP goals. Only if these conditions were met would I be willing to bring a recommendation back to the full City Council to amend to the contract to reflect the change in costs. It took four years for those issues to be fully resolved and costs defined so that a contract amendment could finally be brought to the City Council in fall 2004.

This example illustrates what every councilmember should be concerned about the Grand Jury's definition of “backroom discussions” and “deals,” for it would also apply to the regular meetings that councilmembers have with developers and applicants. Representing the interests of their constituents in their districts, councilmembers work with developers to identify solutions to community issues that the member can then recommend to the full City Council. Both councilmembers and developers fully understand that only the City Council has the authority to approve a project. For example, after councilmember Reed worked with CWS in private meetings to resolve specific land use questions associated with the

company's materials recovery facility in his district, he then made a recommendation for the full Council to consider. This was entirely appropriate and proper activity for a councilmember to achieve a result beneficial to the community.

Finally, Council approved the Norcal contract on March 27, 2001, with two provisions that are important to note: Sections 17.023 and 24.11, which required Norcal to be responsible for all labor costs; and Section 24.24, which is a standard integration clause in which each party acknowledged that the entire agreement was set forth in the written contract that was approved, and no other prior agreements (oral or written) would have any effect.

This contract language makes it very clear that there could not be any other agreement with Norcal, whether it was allegedly by the Mayor or by any other office, to cover the potential increased costs of labor without a contract amendment approved by the City Council. Norcal appears to have relied on my willingness to make a recommendation to the City Council, if the conditions I outlined were met, as a commitment that was beyond my authority as mayor to make. Norcal apparently did not adequately understand the role and the limited authority of the Mayor under our governmental structure in San Jose.

5. Did the Mayor, as alleged by the Grand Jury, express his preferences that Norcal and CWS workers should be represented by Teamsters at the October 6, 2000, meeting?

No. As discussed above, at this session I told Norcal that I wanted the company to provide excellent service to the people of San Jose and to work hard to ensure labor peace. I did not express any preference for any labor organization to represent Norcal or CWS workers.

I know that the only people who can select which union should represent them are the workers themselves. Teamsters made this point to the full Council on October 10, 2000, when the Council also discussed the issue of a neutrality agreement that could provide for a union election with no employer interference. The City Attorney determined later in October that the City could not require a neutrality agreement at this time because it was not a condition of the request for proposals. The Teamsters also filed a complaint on September 5 with the National Labor Relations Board about the fair determination of union jurisdiction, citing the problem of CWS selecting which union would represent its employees.

CWS voluntarily entered a neutrality agreement with the Teamsters in December 2000, setting up the opportunity for CWS workers themselves to designate which labor organization would represent them. The MRF employees officially selected the Teamsters, and the union and CWS at that time began the process of negotiating an agreement that eventually would determine the specific costs of labor for the MRF operation. This agreement would not be signed and executed until July 2003, two and a half years later.

6. Norcal stated in its op-ed column in the Mercury News on August 7, 2005, that the Mayor did discuss labor costs in the meeting with Norcal on October 6, 2000. Who is correct, the Mayor or Norcal?

I cannot speak for Norcal about why their recollection is different than my staff's and mine. There is no record of the discussion itself, but I am confident that we did not discuss higher labor costs at this meeting, nor did I make any commitment to bring the matter to the City Council at this time, as explained in the response to Question 4. Except for this major difference, Norcal's chronology and facts in its opinion column are substantially in agreement with my recollections, City documents, and what is outlined in the response to the Grand Jury.

It is noteworthy that in its same statement Norcal also claimed that CWS and Teamsters were present at the same meeting. Calendar records in the Mayor's Office show that only Norcal representatives were present.

7. Why didn't the Mayor tell the City Council about potential labor costs before it took final actions on the Norcal contract in December 2000 and March 2001?

I didn't know, nor did anyone know, what the full impact on labor costs might be as a result of CWS labor negotiations necessary to achieve labor peace and worker retention until 2003. CWS workers had not yet designated Teamsters as their union until December 2000, and the company could not begin negotiations with the union until that point. CWS and Teamsters did not sign an agreement until July 2003. There could be no accurate estimate of potential costs until labor issues were resolved among the unions, CWS, and Norcal. Councilmembers were aware that labor peace and worker retention ultimately would be a factor in the cost of service over the past five years, as I explain in the answer to Question 2, but the actual costs would not be known and verified until 2004.

As explained in response to Question 4, my office told Norcal on numerous occasions over the following four years that I could not and would not recommend any contract change to the City Council until several conditions were met: 1) Additional costs must clearly defined and validated; 2) there must be clear assurances that any increased costs would go only to the people doing the work; and 3) the overall contract must remain good for the people of San Jose and continue to achieve the Council's original RFP goals. Only if these conditions were met would I be willing to bring a recommendation back to the full City Council to amend to the contract to reflect the change in costs.

As everyone can now see looking back, it took four full years for labor costs issues to be fully resolved and accurately defined so that a contract amendment could finally be brought to the City Council in fall 2004. When the Council approved the amendment, it did so with complete information available to it.

8. Why should the City or ratepayers have to pay the difference in the labor costs from a faulty proposal?

Wages and benefits of the workers providing the everyday work of garbage and recycling services are legitimate costs of business. The City Council has been taking steps to ensure that garbage services are self-sufficient and to eliminate General Fund subsidies of garbage operations. With a "full-cost recovery" model for service rates of all kinds, including garbage, the actual costs of services are most appropriately paid through rates by those who receive the service.

When the City Council approved the contract amendment in 2004, all councilmembers had the full validation by City staff that the increased costs were for labor only, and that the additional payment to Norcal would be passed through directly to the CWS employees doing the work of sorting garbage. Neither the companies nor its executives received any additional profit as a result of the amendment.

Norcal and CWS should have identified costs of worker retention and labor peace more clearly in their original proposal, and the City staff would have been allowed to provide an accurate and complete analysis of these costs.

Forcing vendors to absorb these costs without reimbursement could have led to a deterioration of service, affecting both the workers and the public, and it could have increased the risk of disruptions of garbage services. That outcome would not be good for the people of San Jose or the people doing this necessary work for our community. The City Council agreed with this perspective and my recommendation in 2004, when it approved the contract amendment with full information available.

Prior to the City Council's approval of garbage rate increases in 2003 and 2004, the City's General Fund subsidized the costs of garbage service. By correcting this situation, the City Council made sure that more resources were available for basic public services like police, fire, parks and libraries.

9. Why didn't the Mayor inform the City Council in early 2003 that increased labor costs for Norcal and CWS would require a rate increase?

It would have been better if the City Council was informed that these anticipated costs were included in the rate increase. The Council also should have been reminded of their previously stated goals of labor peace and worker retention as well as their prior discussions about the potential costs of labor peace and paying prevailing wage for the MRF workers that had occurred in September 2001. It is important to keep in mind; however, there was still no formal contract amendment request from Norcal, no signed agreement between CWS and the Teamsters, and no staff analysis to verify any additional costs.

Council was already aware of the potential need for a rate increase to pay for prevailing wage and labor peace. At a Council study session on September 25, 2001, councilmembers discussed the potential cost of achieve labor peace and worker retention. The Administration reported to Council at this meeting that this cost might be as much as \$1.6 million annually, that it might be necessary to increase garbage rates to accomplish this goals, and that these changes would require the City Council to amend the Norcal contract.

On September 13, 2002, the Administration informed the Council it would be recommending a 3% *Recycle Plus!!* service rate increase for single-family dwellings effective January 1, 2003, and further rate increases of approximately 5% per year beginning July 1, 2003 and for each year thereafter through FY 2006-07. The City notified customers that the proposed rate increases were needed to cover labor costs, ensure the residential garbage program was self-supporting, and provide a fund balance sufficient to cover any emergencies or contingencies.

The City Council approved a 9% rate increase in June 2003 as part of the City's annual budget process, and approved a second increase of 9% in June 2004. These increases were for several operating and financial purposes and they spread the costs over more than one year to avoid a single major rate increase that staff estimated could otherwise be as much as 15% in 2003.

Norcal/CWS labor cost increases still were not completely defined in early 2003, and Norcal was not ready to propose a contract amendment at that time. Norcal and CWS were in the middle of protracted dispute about their own subcontract, and CWS and Teamsters were also in dispute about their labor agreement that was not resolved until July 2003. In the context of these disputes and uncompleted negotiations, there was much uncertainty about the potential impact of additional labor costs on rates. In the face of that uncertainty, staff recommended and Council approved the rate increase as part of a fiscally prudent multi-year approach that would provide rate stability over time. This action also helped to prevent the potential need for an even greater rate increase in the future.

10. Do political contributions influence the decision-making and votes of the Mayor and City Council, as suggested by the Grand Jury?

No. I have always made my decisions based on what I believe is best for the people of San Jose. I have a record of voting for and against the interests of political contributors, regardless of what they may have given. To carelessly suggest, as the Grand Jury has, that political contributions have an undue influence on me or City councilmembers is a baseless insult to the integrity of elected officials.

As the response to the Grand Jury explains, information about candidate campaign and/or officeholder account activities, including the names, addresses, and occupations of contributors, as well as the dollar amount of contributions is already available to anyone,

anytime, in the City Clerk's Office. Candidates and officeholders are required by state and City law to report and disclose this information routinely, and the information is a matter of public record. Beginning in 2006, candidates and officeholders will be able to file on-line activity statements, and the City of San Jose will have this information with search capability, available to the public on its website.

During the preparation of this response, my staff found that one of the two members of the Grand Jury subcommittee who interviewed me and helped prepare the Grand Jury's report on the Norcal contract made political contributions to several councilmembers and to the Mayor. The fact that a Grand Jury member also made campaign contributions to a candidate who ran against me in 1998 should not necessarily reflect on the integrity or objectivity of that juror or the Grand Jury itself. I believe this same standard of interpretation should also apply to the political contributions received by elected officials.

11. Why has your account of what you knew and when regarding the Norcal matter changed according to the newspaper?

Immediately following the release of the Grand Jury report on June 13, I responded with printed statements and comments at a news conference. I took the report very seriously and responded quickly, before reviewing the documentary history of the issue. Unfortunately I initially relied on my memory from five years ago, and I misspoke about several matters reported in the news media. These included:

- Although I said that CWS was present at the meeting on October 6, 2000, my calendar records do not support that statement. Neither my staff nor I recall that CWS representatives were present.
- I said that I was not aware of labor jurisdiction issues regarding CWS sorters until October 9. Since June this year we have reviewed our files in detail and saw that both Norcal and the Teamsters had sent letters to the Mayor's Office on October 4 and October 5 that talked about the problem of jurisdiction, though not about costs.
- I originally said in June that I did not tell Norcal that I would be willing to make a recommendation to the City Council regarding added labor costs until sometime in 2001 or 2002. In consulting our files, the public record, and memories, I realized later that we told Norcal this in fall 2000, at least several weeks after the Council selected Norcal on October 10.

With the extra time we have had to review files and documents since the Grand Jury released its report, we have had the opportunity to correct these statement rather than rely on our memories of complex issues going back more than five years.

12. After the Norcal contract amendment, how do San Jose garbage rates now compare with other cities?

San Jose garbage rates are still below the countywide average, and below other major cities in the region. Even with the rate increases in the last two years and with the additional labor costs factored in, San Jose rates are competitive with other local cities.

**Single-Family Dwelling Garbage and Recycling Program
32-Gallon Rate Comparisons**

Santa Clara County Cities	Monthly Rates
Los Altos Hills	\$27.65
Milpitas	\$26.17
Palo Alto	\$23.54
Los Altos	\$22.87
Gilroy	\$22.79
Monte Sereno	\$21.70
Cupertino	\$21.38
Morgan Hill	\$21.12
Countywide Average	\$20.72
Sunnyvale	\$20.58
County - South/West San José (effective 10/1/05)	\$20.29
County - East San José (effective 10/1/05)	\$19.22
Saratoga	\$18.81
San José (current)	\$18.30
Campbell	\$18.05
Santa Clara (<i>rate includes 15% subsidy from General Fund</i>)	\$17.30
Los Gatos	\$16.90
Mountain View	\$15.00

CONCLUSION

The Grand Jury makes three principal claims about the Norcal contract and amendment, and it is wrong on all three of these points.

1. There was no improper “deal” between the Mayor and Norcal that required the City to pay for additional labor costs. Only the City Council can approve changes to the terms of a contract, not the Mayor, and the mayor could not commit the City Council.

2. The entire City Council was aware of the additional costs of labor peace and worker retention over the course of the past five years, and it was completely aware of all the issues and costs when it approved the Norcal contract amendment in December 2004.
3. The Council was aware of labor costs for providing prevailing wages for MRF workers in September of 2001. Council may not have remembered and should have been reminded of this information at the time of the rate increase hearings.

The Grand Jury also completely disregards the public benefits of the competitive process and the specific results provided by the Norcal contract since its transitions to providing services in July 2002. These benefits include:

- San Jose rates for garbage and recycling services remain below average for cities in the region, even with rate increases over the past five years.
- The overall costs of these services to the public over the eleven-year period of the contract are nearly \$40 million lower than what they would have been with the prior contractors, even with the additional cost of labor reflected in the amendment to the Norcal contract.
- Recycling services for the public have been enhanced, and San Jose leads all major cities in California with its 62% rate of diversion of recoverable material from landfills.
- Workers employed by prior contractors had full and fair opportunity to find employment with the new contractors, without suffering cuts in wages or benefits.
- There has been labor peace, and no disruption of garbage service in our community due to labor issues since the resolution of labor agreements in 2003.
- Customer satisfaction with the quality of their garbage services, measured by the City's regular community surveys and customer feedback, remains excellent.

These are significant accomplishments that greatly benefit the public as a result of the City Council's original commitment to a competitive process and its strongly and clearly expressed goals for the new contractors in the Request for Proposals developed in 2000.